

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

v.

DENNIS G. ROGERS

ORDER

10-cr-030-wmc

Defendant Dennis G. Rogers entered a guilty plea on May 28, 2010, to charges of conspiracy to possess with intent to distribute 50 grams or more of cocaine base (*i.e.*, “crack cocaine”). On August 5, 2010, this court sentenced Rogers to serve a term of 48 months in prison. Rogers has now filed a motion to modify his term of imprisonment under 18 U.S.C. § 3582(c)(2) in light of a retroactive change to the United States Sentencing Guidelines (Amendment 750), which altered the drug-quantity table found in § 2D1.1 of the Guidelines and lowered the base offense level for crack-cocaine offenses as of November 1, 2011. (*See* Dkt. #92.) Because Rogers already received the benefit of this change in the drug-quantity table, his motion will be denied.

At sentencing on August 5, 2010, Rogers faced a potential range of 70 to 87 months in prison under the then-current version of § 2D1.1. Two days earlier, however, the President of the United States signed the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2374, to reduce the disparity between sentences imposed for offenses involving crack cocaine and powder cocaine.

Defendants sentenced after August 3, 2010, but before revisions to the Sentencing Guidelines went into effect, are now entitled to the more lenient penalties prescribed by the Fair Sentencing Act. *See Dorsey v. United States*, — U.S. —, 132 S. Ct. 2321, 2336-36

(2012). In anticipation of revisions to the Sentencing Guidelines, however, this court expressly took note at sentencing and even deliberately varied downward and sentenced Rogers well below the applicable guidelines range to serve 48 months' imprisonment.

The government also notes that under an 18 to 1 crack to powder cocaine ratio, Rogers would face a range of 57 to 71 months in prison. Despite aggravating circumstances involving the cynical use of his girlfriend as a cover for his illegal drug manufacturing and distribution business, as well as manipulation of a drug addict and others to act as front men, the court nevertheless went below the low end of this range in recognition of his untapped potential to live a law abiding life.

With a prison sentence of 48 months, however, Rogers already has received a sentence below the range imposed by the most recent amendment to the crack-cocaine guideline. Under these circumstances, Rogers is not, and should not be, eligible for a further reduction in his sentence under § 3582(c). *See Dillon v. United States*, __ U.S. ___, 130 S. Ct. 2683 (2010) (sentence below a retroactive change to an applicable guideline range is outside the scope of 3582(c) proceedings).

ORDER

IT IS ORDERED that defendant Dennis G. Rogers's motion for a sentence reduction under 18 U.S.C. § 3582(c)(2) (dkt. # 92) is DENIED.

Entered this 16th day of June, 2014.

BY THE COURT:

/s/
WILLIAM M. CONLEY
District Judge